



44 Montgomery Street
Suite 400
San Francisco, CA
94104-4606

415.989.5900
415.989.0932 Fax
www.cbmlaw.com

April 23, 2014

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

VIA E-MAIL AND U.S. MAIL

Jennifer Schembri
Deputy Director Employee Relations
Office of the City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113
E-Mail: Jennifer.schembri@sanjoseca.gov

Re: Meeting on May 15th and Zipper Clause
File No.: 034862

Dear Jennifer:

Thank you and your team for your professional courtesies in being amenable to rearranging the date of our forthcoming meeting to Thursday, May 15, 2014. As I understand our agenda, the City and the Department have indicated a desire to discuss bilingual pay, educational incentive pay, and Article 39 ("Modified Duty Assignment") of the Memorandum of Agreement ("MOA").

As always, the POA is ready and willing to sit down and discuss ways we can try to restore our agency as an attractive place for the best and brightest in law enforcement to come and make a career.

I have some understanding of what preceded this meeting, in terms of actions on the Department and City side, informal meetings, and even written proposals to the POA. And the POA will be willing to discuss further how events played out on the 15th.

Before we meet, however, I want to make the POA's position clear concerning the status of our MOA: **The MOA is a closed contract until December 31, 2015, and the POA is not inclined to reopen it at this time.**

That is not to say that if, in the course of discussing whatever issues the City wants to raise, the parties reach mutual agreement, they could not agree to implement such changes.

Relatedly, because of the lead up to this meeting and summaries of other discussions I have been made privy to, I believe it is important to clarify, for the sake of candid discussions, the effect of the "Full Understanding, Modification and Waiver" clause in Article 19 on working conditions while the MOA is in effect.

ARTICLE 19 FULL UNDERSTANDING, MODIFICATION AND WAIVER

19.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any or all prior or existing Memorandum of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

19.2 **Existing benefits within the scope of representation, provided by ordinance or resolution of the City Council or provided in the San Jose Municipal Code, or provided in the Memorandum of Agreement shall be continued without change during the term of this Agreement.**

..

19.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer or negotiate on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer or negotiate on the subject matter covered herein. [Bold and underline added.]

Article 19.2 B makes plain that any existing benefits within the scope of representation, which would include matters covered in the MOA and elsewhere, cannot be changed during the lifetime of the MOA absent agreement by the POA.

Notably the "elsewhere" in the prior sentence would mean that the City cannot make changes within the scope of representation even by resolution, ordinance or Charter amendment, unless the POA approves.

Obviously if the City has a different opinion regarding any of the above, we should discuss it on the 15th.

Jennifer Schembri
Re: Meeting on May 15th and Zipper Clause
April 22, 2014
Page 3

All of the above having been said, we look forward to collaborative discussions at our meeting.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Larry Esquivel, Chief of Police
Edgardo Garcia, Deputy Chief
Robert Perrin, Executive Analyst
Jim Unland, President, San Jose POA
John Robb, Vice President, San Jose POA
Franco Vado, Chief Financial Officer, San Jose POA